

**UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF OHIO  
WESTERN DIVISION**

**IN RE:**

**ARETA J. WENTZ**

**Debtor**

**CHAPTER 13**

**CASE NO. 07-34235**

**JUDGE: GUY R. HUMPHREY**

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**Areta J. Wentz**

**Plaintiff**

**v.**

**Saxon Mortgage, et. al.**

**Defendants**

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**ADVERSARY NO. 08-03053**

**MOTION FOR DEFAULT JUDGMENT  
AGAINST DEFENDANT RANDALL  
MORTGAGE FOR FAILURE TO  
RESPOND**

Now comes Plaintiffs Areta J. Wentz, by and through her undersigned counsel, and moves the Court for an Order of Default Judgment against Defendant Randall Mortgage Inc. ("Randall"), and as grounds therefore state as follows:

1. The Adversary Complaint ("Complaint") was filed February 26, 2008 (Docket #1).
2. On March 3, 2008 an original summons was issued and , along with a copy of the Complaint, by certified mail to Randall at 655 Metro Place South, Suite 600 Dublin, Ohio 43017 (Docket #4) and at 9299 Concord Road, Powell, Ohio 43065 (Docket #5). (Exhibit A).
3. On March 4, 2008 Randall was served at 9299 Concord Road, Powell, Ohio 43065 and on March 10, 2008 at 655 Metro Place South, Suite 600 Dublin, Ohio 43017 with the summons and copy of the Complaint via pre-paid certified mail, as evidenced by the signatures on the certified mailing card (Exhibit B). Accordingly, Defendant was served within 120 days after the Complaint was filed, as required by Fed. R. Civ. P. 4(m).
4. Pursuant to Fed. R. Bankr. P. 7012, Randall was required to respond to the Complaint within 30 days or by March 31, 2008. The summons terms specifically stated that, "if you fail to respond to this summons, your failure will be deemed to be your consent to entry of a judgment by the Bankruptcy Court and judgment by default may be taken

against you” (Exhibit A).

5. As of the date of this motion, Defendant has yet to serve any answer or Rule 7012 motion on Plaintiff’s attorney. Furthermore, Randall has failed to file any document whatsoever with the Court in the above-captioned proceeding.

6. On Plaintiff’s best knowledge and belief Randall has ceased operating as a licensed broker in the State of Ohio in September or October 2007.

7. On Plaintiff’s best knowledge and belief Randall retained a bond under the provisions of ORC § 1322.05 with North American Specialty Insurance Company in the amount of at least \$70,000 that will apply to Plaintiff’s mortgage loan transactions with Randall.

8. Pursuant to Fed. R. Bankr. P. 7055 and Fed. R. Civ. P. 55, Plaintiffs are entitled to Default Judgment against Randall for its failure to respond or set forth any defense to the claims contained in the Complaint. “When a party against whom a judgment for affirmative relief is sought has failed to plead or otherwise defend,” the party seeking relief is entitled to default judgment. Fed. R. Civ. P. 55(a).

9. Plaintiff set forth in her Complaint, claims for damages against Defendant Randall for fraud and Mortgage Broker’s Act violations. Because Randall has not responded to these allegations, for purposes of this motion for default judgment the Court must accept Plaintiff’s allegations as true.

10. Plaintiff identified fees and costs she paid directly to Randall for brokering a mortgage loan on her home in the amount of \$6,619 of which \$5,609 was directly paid to Randall. (Complaint ¶ 50 and Complaint Exhibit 11).

11. Plaintiff further identified an additional yield spread premium (“YSP”) payment of \$2,400 paid to Randall by Defendant Saxon Mortgage Inc. (“Saxon”) which payment was assessed against Plaintiff by Saxon through higher interest rates and higher monthly payments on her mortgage loan and a violation of ORC §1322.07. (Complaint ¶’s 53-56)

12. Plaintiff further identified an excessive appraisal fee of \$ 525 paid by Plaintiff for services by Polaris Appraisal who was retained by Randall. (Complaint ¶’s 45-49, 60).

13. Plaintiff also identified the appraised value of Polaris as substantially inflated compared to the fair value for the property at the time of the appraisal in 2005. (Complaint ¶’s 46-47).

14. Plaintiff in her Third Claim asserts that facts of Fraud as to Randall’s fraudulent

representations and actions in providing the loan to Plaintiff (Complaint ¶'s 124-137).

15. Plaintiff establishes the damages for Randall's fraudulent actions as \$9,544 based on finance charges and fees received by Randall from the loan transaction. (Complaint ¶117)

16. Plaintiff in her Fifth Claim asserts actions in violation of the Mortgage Broker's Act. (Complaint ¶'s 147-154). As a registered and licensed mortgage broker in the State of Ohio, Randall is subject to the Mortgage Brokers Act. ORC § 1322.01 et. seq. Randall, through its agent, acted in a deceptive, improper, fraudulent, or dishonest manner by inducing plaintiff to refinance her existing fixed rate mortgage to a loan with a balloon payment without advising her of the terms of the loan, failing to provide documents at the closing, inducing Plaintiffs acceptance through false statements, failing to disclose the YSP as an additional fee for which no services were performed and falsely stating in the loan documents that Plaintiff would receive a cash payment. With malice, ill will, or reckless indifference toward Plaintiff, Randall, through its agents, caused Plaintiff to incur mortgage loan payments and debt that did not meet the promised lower monthly payments that were to replace the existing loan and which resulted in excessive fees charged to Plaintiff.

17. As set forth in Plaintiff's Complaint ¶117, the fees and charges received directly or indirectly by Randall that were paid for by Plaintiff amounted to \$9544.

18. Under the provisions of ORC § 1322.11 (A)(1) a party who is the victim of a violation of the statute by a mortgage broker is entitled to actual damages incurred.

19. Under the provisions of ORC § 1322.11 (A)(3) a party who is the victim of a violation of the statute by a mortgage broker is entitled to punitive damages and deceptive and fraudulent practices by a mortgage broker as in Plaintiff's case entitle her to punitive damages.

20. Punitive damages of three times actual damages is a reasonable assessment of damages for a violation for Randall's fraudulent and statutory violations.

21. Damages in the amount of \$28,632 are requested based upon Randall's violations of the ORC § 1322.07, 1322.071 and as authorize by §1322.11(A)(1) an (2).

22. Plaintiff also requests the court to award attorney fees and costs as authorize by ORC §1322.11(A)(3) which are set forth in the attached affidavit in the amount of \$4,562.90. (Exhibit C).

WHEREFORE, Plaintiff respectfully requests the Court enter judgment by default against Randall for all relief requested against Randall in the Complaint.

Respectfully Submitted

/s/ Charles J. Roedersheimer  
Charles J. Roedersheimer # 0020273  
Attorney for Plaintiff  
Thompson & DeVeney Co. LPA  
1340 Woodman Drive  
Dayton, Ohio 45432  
937-252-2030  
937-252-9425 FAX  
Charles@thompsonanddeveney.com

#### **CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a true copy of the foregoing was served by Electronic/ECF means or by regular US Mail, postage prepaid, on July 20, 2009 on the following parties:

By Electronic/ECF:

U.S. Trustee, 170 N. High Street, Suite 200, Columbus, Ohio 43215

Jeffrey M Kellner, Trustee, 131 North Ludlow Street, Suite 900, Dayton, OH 45402

Nathan Swehla, Lerner Sampson & Rothfuss, P.O. Box 5480, Cincinnati, OH 45201,  
*Attorney for Defendant Saxon Mortgage Services, Inc.*

Attorney of Record for John Polinko, Shapiro Van Ness Phillips & Barragate 1500 West Third Street, Suite 455, Cleveland, OH 44113

And By U.S. Mail to:

Areta J. Wentz, 1117 N. Maple Street, Eaton, OH 45320, *Debtor*

Randall Mortgage Inc., 655 Metro Place South, Suite 600 Dublin, Ohio 43017

Randall Mortgage Inc. Attention of Robert Shepherd, 9299 Concord Road, Powell, Ohio 43065

/s/ Charles J. Roedersheimer  
Charles J. Roedersheimer # 0020273

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Southern District Of Ohio

## SUMMONS IN AN ADVERSARY PROCEEDING

# United States Bankruptcy Court

Southern District Of Ohio

In re	Areta J. Wentz	)	
	Debtor	)	Case No. <u>07-34235</u>
		)	
	Areta J. Wentz	)	Chapter <u>13</u>
	Plaintiff	)	
	vs.	)	
	Randall Mortgage Inc.	)	Adv. Proc. No. <u>08-3053</u>
	Defendant	)	

## SUMMONS IN AN ADVERSARY PROCEEDING

YOU ARE SUMMONED and required to file a motion or answer to the complaint which is attached to this summons with the clerk of the bankruptcy court within 30 days after the date of issuance of this summons, except that the United States and its offices and agencies shall file a motion or answer to the complaint within 35 days.

Address of Clerk

Clerk of Courts United States Bankruptcy Court  
120 West Third Street  
Dayton, Ohio 45402

At the same time, you must also serve a copy of the motion or answer upon the plaintiff's attorney.

Name and Address of Plaintiff's Attorney

Charles J. Roedersheimer  
1340 Woodman Drive  
Dayton, Ohio 45432

If you make a motion, your time to answer is governed by Fed. R. Bankr. P. 7012.

**IF YOU FAIL TO RESPOND TO THIS SUMMONS, YOUR FAILURE WILL BE DEEMED TO BE YOUR CONSENT TO ENTRY OF A JUDGMENT BY THE BANKRUPTCY COURT AND JUDGMENT BY DEFAULT MAY BE TAKEN AGAINST YOU FOR THE RELIEF DEMANDED IN THE COMPLAINT.**



Date Issued: February 28, 2008

/s/Kenneth Jordan - Clerk of Court

SENDER: COMPLETE THIS SECTION		COMPLETE THIS SECTION ON DELIVERY	
<p>■ Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.</p> <p>■ Print your name and address on the reverse so that we can return the card to you.</p> <p>■ Attach this card to the back of the mailpiece, or on the front if space permits.</p>		<p>A. Signature X <i>Bank Staff</i> <input type="checkbox"/> Agent <input type="checkbox"/> Addressee</p>	
		<p>B. Received by (Printed Name) C. Date of Delivery 3-4-08</p>	
<p>1. Article Addressed to:</p> <p>Randall Mortgage c/o Robert Shepherd, stat. agent 9299 Concord Road Powell, OH 43065</p>		<p>D. Is delivery address different from item 1? <input type="checkbox"/> Yes If YES, enter delivery address below: <input type="checkbox"/> No</p>	
<p>A. Wentz-Adv08-3063</p>		<p>3. Service Type <input checked="" type="checkbox"/> Certified Mail <input type="checkbox"/> Express Mail <input type="checkbox"/> Registered <input checked="" type="checkbox"/> Return Receipt for Merchandise <input type="checkbox"/> Insured Mail <input type="checkbox"/> C.O.D.</p>	
<p>2. Article Number (Transfer from service label)</p>		<p>4. Restricted Delivery? (Extra Fee) <input type="checkbox"/> Yes</p>	
<p>7007 2560 0000 3370 6651</p>			

PS Form 3811, February 2004 Domestic Return Receipt 102595-02-M-1540



SENDER. COMPLETE THIS SECTION	COMPLETE THIS SECTION ON DELIVERY
<ul style="list-style-type: none"><li>■ Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.</li><li>■ Print your name and address on the reverse so that we can return the card to you.</li><li>■ Attach this card to the back of the mailpiece, or on the front if space permits.</li></ul>	<p>A. Signature X <i>Barb Shuff</i> <input type="checkbox"/> Agent <input type="checkbox"/> Addressee</p> <p>B. Received by (Printed Name) C. Date of Delivery 3/4/08</p>
<p>1. Article Addressed to:</p> <p>Randall Mortgage c/o Robert Shepherd, stat. agent 9299 Concord Road Powell, OH 43065</p> <p>A. Wentz-Adv08-3083</p>	<p>D. Is delivery address different from item 1? <input type="checkbox"/> Yes If YES, enter delivery address below: <input type="checkbox"/> No</p> <p>3. Service Type <input checked="" type="checkbox"/> Certified Mail <input type="checkbox"/> Express Mail <input type="checkbox"/> Registered <input checked="" type="checkbox"/> Return Receipt for Merchandise <input type="checkbox"/> Insured Mail <input type="checkbox"/> C.O.D.</p> <p>4. Restricted Delivery? (Extra Fee) <input type="checkbox"/> Yes</p>
<p>2. Article Number (Transfer from service label)</p>	<p>7007 2560 0000 3370 6651</p>

UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF OHIO  
WESTERN DIVISION

IN RE:

Areta J. Wentz

Debtor

CHAPTER 13

CASE NO. 07-34235

Judge Guy R. Humphrey

Areta J. Wentz

Plaintiff

v.

Saxon Mortgage, et al.

Defendants

ADVERSARY CASE NO. 08-ap-03053


AFFIDAVIT OF  
CHARLES J. ROEDERSHEIMER

STATE OF OHIO :  
: s.s.  
COUNTY OF MONTGOMERY :

I, Charles J. Roedersheimer, do affirm and swear to the following:

1. As the case attorney and counsel in Debtor's adversary case, the attached Exhibit A sets forth fees and costs incurred or to be incurred as to Defendant Randall in the processing and pursuit of the fraud and Ohio Mortgage Broker Act (ORC §1322.01 et. seq.) claims in the adversary proceeding.
2. The legal services and fees set forth were incurred over a period of approximately 19 months and the fees and costs include estimates as to the time and costs that will be required to obtain recovery on the bond that was issued as to Defendant Randall Mortgage pursuant to the requirements of the Ohio Revised Code §1322.

Further affiant saith naught.

  
/s/ Charles J. Roedersheimer  
Charles J. Roedersheimer, #0020273  
Attorney for Debtors  
Thompson and DeVeney Co., LPA  
1340 Woodman Drive  
Dayton, Ohio 45432  
937-252-2030  
937-252-9425 fax  
[charles@thompsonanddeveney.com](mailto:charles@thompsonanddeveney.com)



Sworn to and subscribed in my presence by Charles J. Roedersheimer this 20<sup>th</sup> day of July, 2009.

  
NOTARY PUBLIC



KAREN JO MCCOY  
Notary Public, State of Ohio  
My Commission Expires 03-31-10

## Time Sheet-

## Thompson and DeVeney Co., L.P.A.

Client -Areta Wentz- BK Adversary Case 08- 03053 Adversary 08-ap-03033 - Randall Mortgage

CASE: Adversary Defendant

Lester Thompson \$ 275.00  
 Andrew Zeigler \$ 175.00  
 William House \$ 165.00  
 Charles Roedersheimer \$ 275.00  
 Staff - Law Clerk \$ 75.00

\$250 before 1/1/2008

Total \$ 4,562.90

Name	Date	Time	Description	Time Charge	Cost Charge
Roedersheimer (CR)	10/3/2007	1.0	Conference clients - Intake on information on mtg loan	\$ 250.00	
CR	12/12/2007	0.5	Formulate Plan terms for adversary	\$ 125.00	
CR & Lester Thompson -	12/20/2007	0.8	Confer with Les regarding adversary - Avg for 2 attorneys	\$ 380.00	
Staff (ST)	12/31/2007		Mailing- Client information		\$ 1.81
Staff -Law Clerk	1/12/2008	1.0	Locate Randall Mortgage Information - Status	\$ 75.00	
Staff-Law Clerk	1/20/2008	0.5	Check Corporate status and statutory agent - Randall	\$ 37.50	
CR	1/24/2008	0.3	Review summons information Randall	\$ 68.75	
Staff - Law Clerk	2/3/2008	0.7	Draft Complaint-Randall Involvement	\$ 75.00	
Staff Law Clerk	2/6/2009	0.5	Research on Randall Portion of Claim - Broker Act	\$ 37.50	
CR	2/20/2008	0.8	Review and Rewrite final Complaint- Randall	\$ 220.00	
CR	2/24/2008	0.5	Confirm Bond status for Broker Randall- State of Ohio	\$ 137.50	
Staff (ST)	2/24/2008		Filing, Copy and Mailing of Summons and Complaint- Randall	\$ 10.80	
CR	3/28/2008	0.3	Review notice provisions on summons to Randall	\$ 82.50	
CR	9/18/2008	0.3	Pretrial draft and prep - Randall	\$ 82.50	
CR	10/15/2008	0.2	Final Pretrial Order- Randall	\$ 55.00	
CR & LT	12/5/2008	0.5	Review of Options on Randall Because of No Answer and Other De	\$ 287.50	
CR	5/1/2009	0.5	Review Options with client to pursue default with Randall	\$ 137.50	
CR	5/20/2009	0.4	Brief Law Clerk for draft of default for Randall	\$ 110.00	
CR	5/22/2009	0.3	Followup- status of bond for Randall	\$ 82.50	
Staff- Law Clerk	6/20/2009	1.5	Draft -Default Judgment for Randall	\$ 112.50	
CR	7/5/2009	0.2	Confirm -Commerce- Washington holds Bond for Randall and Fund	\$ 55.00	
CR	7/5/2009	1.0	Finalize default motion	\$ 275.00	
CR	7/15/2009	1.0	Edit fees and costs for Default Judgment Information	\$ 275.00	
CR	7/16/2009	0.4	Affidavit in Support of Default Judgment	\$ 110.00	
CR & Law Clerk	7/14/2009	0.5	Confirm Exhibits for Default	\$ 175.00	
Staff	7/20/2009		Mailing, Copy and File Default Judgment - Randall	\$ -	\$ 11.54

CR	7/21/2009	0.2 Confirm Case file for purposes of keeping case open for Default			
CR	July-Aug 09	1.0 Estimate- Correspondence with Insurer to Collect on Bond	\$	55.00	
Staff	July-Sept09	Mailing and Copy cost to Collect	\$	275.00	50.00
CR	Aug-Oct 09	2.5 Negotiations and collection and settlement terms	\$	-	
Legal Research Fees	Lexis	Summary from Lexis Billing	\$	687.50	225.00
Totals		17.3	\$	4,263.75	299.15
Total- Cost and Fees		Cost	\$	4,562.90	